

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TENTATIVE ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-XXXX

MANDATORY PENALTY
IN THE MATTER OF

CITY OF STOCKTON
REGIONAL WASTEWATER CONTROL FACILITY
SAN JOAQUIN COUNTY

This Order is issued to the City of Stockton (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders 94-324, R5-2002-0083, and R5-2008-0154 (NPDES No. CA0079138).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the City of Stockton, the Port of Stockton, and surrounding urbanized County areas. Treated municipal wastewater is discharged through a single outfall to the San Joaquin River, a navigable water of the United States and part of the Sacramento-San Joaquin Delta.
2. On 28 October 1994, the Central Valley Water Board issued WDRs 94-324 to regulate discharges of waste from the wastewater treatment plant. On 26 April 2002, the Board issued WDRs Order R5-2002-0083, which contained new requirements and rescinded Order 94-324. On 26 April 2002, the Central Valley Water Board also issued Cease and Desist Order (CDO) R5-2002-0084. This Order required the Discharger to comply with effluent ammonia limitations by 1 April 2007. On 23 October 2008, the Central Valley Water Board issued WDRs Order R5-2008-0154, which became effective 12 December 2008, contained new requirements, and rescinded order R5-2002-0083.
3. On 23 October 2008, the Central Valley Water Board issued Time Schedule Order (TSO) R5-2008-0155. This Order included, *inter alia*, interim effluent limitations for cyanide.
4. On 10 November 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint R5-2008-0606. Complaint R5-2008-0606 charged the Discharger with violations subject to mandatory minimum penalties that occurred from 1 January 2000 through 30 April 2008, and proposed a penalty of \$18,000. The Discharger subsequently waived its rights to a hearing within 90 days and entered into settlement discussions.
5. On 29 August 2008, Board staff sent the Discharger a draft Record of Violations for the period from 1 January 2000 through 30 April 2008. The Discharger responded on 19 September 2008, and agreed with the record. On 10 February 2009, Board staff sent

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the Discharger a draft Record of Violations for the period 1 May 2008 through 31 December 2008. The Discharger responded on 17 February 2009, and agreed that the ROV accurately reflected violations at the facility. In addition, the Discharger listed violations which had not been included in the ROV or the previous ACLC, as discussed in Finding 14.

6. At the request of the Discharger, Complaint R5-2009-0526, issued on 30 March 2009, rescinded Complaint R5-2008-0606 and included all violations that occurred from 1 January 2000 through 31 December 2008.
7. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

8. CWC section 13385(l) allows a discharger to complete a Supplemental Environmental Project (SEP) in lieu of paying the full amount of a mandatory penalty, and states, in relevant part:

(l)(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the

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enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

9. WDRs Order 94-324 Effluent Limitations No. B.1., states, in part:

Effluent shall not exceed the following limits:

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
Total Coliform Organisms	MPN/100 mL	23 (median)	--	--	500

10. WDRs Order R5-2002-0083 Effluent Limitations No. B.1. states, in part:

Effluent shall not exceed the following limitations:

<u>Constituents</u>		<u>Yearly Total</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Oil and Grease	mg/L		10		15
	lbs/day ³		4,600		6,900
Ammonia-N	mg/L		2		5
Cyanide	µg/L ¹		4.0		9.2
Dibromochloromethane	(µg/L)	--	--	--	23
	(lbs/day ³)				10.6

¹ These are final effluent limits. Interim effluent limitations specified in B.6 are effective in lieu of final limits until Title 22 filtration/disinfection facilities are operational as mandated by Provision G.1. Final effluent limitations will become effective on 1 May 2006.

³ Based upon a permitted flow of 55 mgd

11. WDRs Order R5-2002-0083 Effluent Limitations No. B. 2. states, in part:

Effective immediately, effluent shall not exceed the following seasonal cBOD effluent limitations:

<u>Constituents</u>	<u>(Units)</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>	<u>Effective Dates</u>
cBOD	(mg/L) ⁽¹⁾	10	20	25	1 April through 31 October

⁽¹⁾ 5-day, 20°C, carbonaceous biochemical oxygen demand, ascertained by 24-hour composite

12. WDRs Order R5-2002-0083 Effluent Limitations No. B.6. states, in part:

Interim effluent limits effective until 1 May 2006, when Title 22 filtration/disinfection is completed. The effluent shall not exceed the following limitations:

<u>Constituents</u>	<u>(Units)</u>	<u>Yearly Total</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Daily Maximum</u>
Total Coliform	(MPN/100 mL)	--	23 (median)	--	240

13. Time Schedule Order R5-2008-0155, Item 2, states, in part:

The following interim effluent limitations shall be effective immediately. The interim effluent limitations for ... cyanide shall be effective until 1 October 2013, or when the Discharger is able to come into compliance, whichever is sooner.

<u>Parameter</u>	<u>Average Monthly Effluent Limitation (µg/L)</u>	<u>Maximum Daily Effluent Limitation (µg/L)</u>
Cyanide (Total Recoverable)	4.1	9.2

14. Central Valley Water Board staff made the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Record of Violations).

- Oil and Grease, New Violations 4-7. The Discharger provided documentation that these violations had not been included in ACLC R5-2008-0606. These violations were added.
- Total Coliform Organisms, New Violations 10, 14-17. The Discharger provided documentation that these violations had not been included in ACLC R5-2008-0606. These violations were added.

15. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group I violations of the above effluent limitations contained in Orders 94-324 R5-2002-0083, and R5-2008-0154 during the period beginning 1 January 2000 and ending 31 December 2008. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for these serious violations is **twelve thousand dollars (\$12,000)**.

16. According to the Discharger's self-monitoring reports, the Discharger committed seven (7) serious Group II violations of the above effluent limitations contained in Orders 94-234, R5-2002-0083, and R5-2008-0154 during the period beginning 1 January 2000 and ending 31 December 2008. These violations are defined as serious because measured concentrations of Group II constituents exceeded maximum prescribed levels by more than 20 percent on these occasions. The mandatory minimum penalty for these serious violations is **twenty-one thousand dollars (\$21,000)**.

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17. According to the Discharger's self-monitoring reports, the Discharger committed twenty-one (21) non-serious violations of the above effluent limitations contained in Orders 94-324, R5-2002-0083, R5-2008-0154 and R5-2008-0155 during the period beginning 1 January 2000 and ending 31 December 2008. Nine (9) of these non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for these non-serious violations is **twenty-seven thousand dollars (\$27,000)**.
18. The total amount of the mandatory penalties assessed for the cited effluent violations is **sixty thousand dollars (\$60,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
19. On 23 April 2009, the Central Valley Water Board delegated the authority to issue Administrative Civil Liability Orders, where the matter is not contested by the Discharger, to the Executive Officer, or to an Assistant Executive Officer when the Executive Officer is serving as head of the Board's Prosecution Team (Resolution R5-2009-0027). Pamela Creedon is serving as the head of the Board's Prosecution Team for this matter, and therefore Assistant Executive Officer Ken Landau has the authority to issue this Order.
20. This Order constitutes a settlement of the violations herein mentioned. Notice of this settlement was published on the Central Valley Water Board's website, in a newspaper of general circulation in the community, and was provided to all interested parties. The 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) has expired.
21. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE CITY OF STOCKTON IS HEREBY GIVEN NOTICE THAT:

1. The Discharger shall be assessed an Administrative Civil Liability in the amount of **sixty thousand dollars (\$60,000)**.
2. The Discharger will remit payment for **twenty-two thousand five hundred dollars (\$22,500)** of the imposed civil liability by check, which shall contain a reference to "ACL Order R5-2009-XXXX" and shall be made payable to the "State Water Pollution Cleanup and Abatement Account." This payment must be received by the Central Valley Water Board **within 30 days of when this Order is signed**.
3. Of the sixty-thousand dollar assessed penalty, **thirty-seven thousand five hundred dollars (\$37,500)** shall be suspended, pursuant to CWC section 13385(l), pending completion of a Supplemental Environmental Project (SEP). The SEP chosen by the Discharger is the Delta Methylmercury TMDL Stakeholder Facilitation, and appears on the Central Valley Water Board's list of pre-approved SEPs. A copy of the SEP Project Description, which includes a list of deliverables that will be submitted to the Central

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Valley Water Board at the end of the project, can be found as Attachment B, a part of this Order. **Within 30 days of when this Order is signed**, the Discharger shall make a payment of \$37,500 to the Center for Collaborative Policy in order to partially fund this SEP.

4. By **15 December 2009**, the Center for Collaborative Policy shall submit information to the Central Valley Water Board, including, but not limited to, receipt of a payment of \$37,500 from the City of Stockton, and the deliverables described in Attachment B, "Project Schedules and Deliverables". Upon receipt of these items, \$37,500 of the penalty assessed against the City of Stockton shall be permanently suspended. It is understood that the Center for Collaborative Policy may scale back the scope of the project if the remainder of the project funds are not secured. However, in the event that less than \$37,500 is spent on the SEP, the Discharger shall be responsible for submitting the difference between the amount actually spent and the amount that was proposed to be spent to the Central Valley Water Board in the form of a check, which shall contain a reference to "ACL Order R5-2009-XXXX" and shall be made payable to the "State Water Pollution Cleanup and Abatement Account." This payment shall be made within 30 days after the Assistant Executive Officer demands payment.
5. Should the Discharger fail to take any of the above actions, the Assistant Executive Officer may refer the matter to the State Attorney General for enforcement of the terms of this Order.
6. This Order is final upon signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

KEN LANDAU, Assistant Executive Officer

DATE

Attachment A: Record of Violations
Attachment B: Supplemental Environmental Project

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Attachment A
Administrative Civil Liability Order R5-2009-xxxx

City of Stockton
Regional Wastewater Control Facility
RECORD OF VIOLATIONS (1 January 2000 – 31 December 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs 94-324, R5-2002-0083 and R5-2008-0154)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	23-Apr-00	Coliform	MPN/100 mL	500	1600	Daily	3	174273
2	28-Apr-00	Coliform	MPN/100 mL	500	520	Daily	3	174145
3	10-Dec-02	Coliform	MPN/100 mL	240	830	Daily	3	226327
4	2-Dec-02	Oil and Grease	mg/L	15	89	Daily	1	807297
5	2-Dec-02	Oil and Grease	lbs/day	690	28050	Daily	1	807298
6	31-Dec-02	Oil and Grease	mg/L	10	22	Monthly	1	807295
7	31-Dec-02	Oil and Grease	lbs/day	460	6770	Monthly	1	807296
8	3-May-05	Coliform	MPN/100 mL	240	1600	Daily	3	369494
9	5-May-05	Coliform	MPN/100 mL	240	500	Daily	3	369496
10	1-Dec-05	Coliform	MPN/100 mL	240	1600	Daily	3	807299
11	9-Apr-06	Coliform	MPN/100 mL	240	900	Daily	3	793633
12	31-Jul-06	cBOD	mg/L	25	30	Daily	3	793634
13	11-Oct-06	Dibromochloromethane	µg/L	23	29	Daily	2	793719
14	30-Jul-07	Coliform	MPN/100 mL	240	280	Daily	3	807300
15	31-Jul-07	Coliform	MPN/100 mL	240	900	Daily	3	807301
16	1-Aug-07	Coliform	MPN/100 mL	240	300	Daily	3	807302
17	9-Aug-07	Coliform	MPN/100 mL	240	1600	Daily	4	807303
18	16-Aug-07	Dibromochloromethane	µg/L	23	56	Daily	2	793720
19	16-Aug-07	Dibromochloromethane	lbs/day	10.6	12.4	Daily	4	793724
20	5-Sep-07	Dibromochloromethane	µg/L	23	53	Daily	2	793725
21	5-Sep-07	Dibromochloromethane	lbs/day	10.6	13.5	Daily	2	793727
22	10-Oct-07	Dibromochloromethane	µg/L	23	35	Daily	2	793728
23	10-Oct-07	Dibromochloromethane	lbs/day	10.6	10.8	Daily	4	793729
24	18-Jun-08	Cyanide	µg/L	9.2	13	Daily	2	805154
25	25-Jun-08	Cyanide	µg/L	9.2	11	Daily	3	805159
26	30-Jun-08	Cyanide	µg/L	4	7.4	Monthly	2	805784
27	31-Jul-08	Cyanide	µg/L	4	4.8	Monthly	4	805161
28	29-Aug-08	Coliform	MPN/100 mL	23	50	Daily	4	805162
29	2-Sep-08	Coliform	MPN/100 mL	23	50	Daily	4	805164
30	12-Oct-08	Ammonia	mg/L	5	5.6	Daily	4	805165
31	13-Oct-08	Ammonia	mg/L	5	5.5	Daily	4	805168
32	31-Oct-08	Cyanide	µg/L	4.1	4.2	Monthly	4	805169

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.

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2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>12/31/2008</u>
Group I Serious Violations:	4
Group II Serious Violations:	7
Non-Serious Exempt from MPs:	12
Non-serious Violations Subject to MPs:	9
<u>Total Violations Subject to MPs:</u>	<u>20</u>

Mandatory Minimum Penalty = (11 Serious Violations + 9 Non-Serious Violations) x \$3,000 = \$60,000

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Proposed SEP Project Description

Project Title: Delta Methylmercury TMDL Stakeholder Facilitation

Geographic area of interest: Delta

Name of responsible entity: California State University, Sacramento
Center for Collaborative Policy (CCP)

Estimated cost for project completion: \$74,300 to complete all scheduled tasks. The actual work scope maybe revised if funding is less than \$74,300.

Contact Information:

Name: David Ceppos
Address: 815 S Street, Sacramento CA 95814
Phone: (916) 445-2079
Email: dceppos@ccp.csus.edu

Brief description of the project:

Central Valley Regional Water Quality Control Board (Regional Board) staff is currently engaging with stakeholders in a facilitated process to develop a Delta Methylmercury TMDL and implementation plan. In April 2008, after hearing staffs proposal and public comments on the draft Delta mercury plan, the Regional Board directed staff to work through a stakeholder process to address and resolve stakeholders' concerns. The Regional Board retained the Center for Collaborative Policy (CCP) to facilitate the stakeholder process. CCP's efforts to date include process planning, stakeholder interviews, facilitation of general stakeholder and work group meetings, and guidance in determining how collaboration with stakeholders can be most effective in resolving concerns and developing recommendations for the TMDL implementation plan.

During the April 2009 Regional Board meeting, the Executive Officer, Regional Board Members, and many stakeholders indicated that the stakeholder process facilitated by CCP has been productive and continued progress will result in an improved Delta control plan. However, the Regional Board has exhausted its ability to pay for the process. Approximately \$74,300 will be needed to complete the fully-planned stakeholder process. Several stakeholders have pledged a combined total of about \$18,000 as well as in-kind services to help reduce the cost of CCP's services; this SEP project will contribute additional funds that will be needed to ensure adequate facilitation support from CCP.

Water body, beneficial use and/or pollutant addressed by this project:

The Sacramento-San Joaquin Delta Estuary (Delta) is impaired due to elevated levels of methylmercury in fish tissue. In 1990, the State Water Board adopted the Clean Water Act 303(d) list that identified the Delta as impaired due to mercury pollution. The listing was based on a 1971 human health advisory issued for the Delta advising pregnant women and children not to eat striped bass. Since then, the California Office of Environmental Health Hazard Assessment has issued additional advisories and safe eating guidelines for striped bass and other fish species with elevated concentrations of methylmercury in their tissue. In addition, birds and mammals that primarily or exclusively feed on fish are at risk from the elevated fish mercury levels in the Delta. A mercury control program must be developed to lower fish mercury levels in the Delta so that the beneficial uses of fishing and wildlife

habitat are attained. Stockton discharges directly to the Delta and consequently all violations directly relate to the area for which this TMDL is being developed, meeting the “geographic nexus” criterion in the State Water Board Water Quality Enforcement Policy (p. 46).

Project benefits:

The combination of large group stakeholder meetings and topic-specific workgroup meetings has been beneficial and is expected to lead to a TMDL and implementation program that is more effective than that previously drafted by Regional Board staff and more acceptable to many of the stakeholders who previously had concerns about the program. This will enable the implementation program to be more quickly put into action, leading to more rapid water quality improvements. In addition, the implementation framework developed for this TMDL will serve as a model for the upstream mercury TMDLs.

Project schedule and deliverables:

Milestones:

May-July 2009 — CCP convenes and facilitates a Stakeholder Group and Environmental Justice Caucus with monthly meetings, and facilitates 2-3 topic-specific workgroups with meetings throughout each month.

July-November 2009 — CCP continues to facilitate the Stakeholder Group and Environmental Justice Caucus with monthly meetings. During this time the groups would (1) develop a list of areas of consensus, areas of dissension, and recommendations for the Regional Board Members; and (2) review Regional Board staffs efforts to integrate the stakeholder process results into the draft TMDL and Basin Plan amendment documentation to be presented to the Regional Board Members.

Performance Criteria:

A minimum of one stakeholder meeting per month takes place and a list of areas of consensus and dissension is drafted.

Oversight and review:

Patrick Morris (Regional Board staff) and Pamela Creedon (Regional Board Executive Officer), and other Regional Board staff and Regional Board Members will attend stakeholder meetings and monitor progress to ensure that the stakeholder group is given an adequate technical base for their efforts, and that the goal of developing a list of areas of consensus and dissension is accomplished.

Cooperative funding:

In addition to funding through this SEP, the City of Stockton has offered to provide a minimum of \$5000, and three other stakeholder entities have made offers to the Regional Board to fund an additional \$13,500. Some other stakeholders are still evaluating their potential to contribute.